paragraphs (a), (c), (d) and (e) of the prayer in the statement of claim.

Leave granted.

Solicitors: *Shook Lin & Bok; Heng, Chen & Co.*

YEE HOI KONG v. BAN SAN

[A.C.J. (Abdul Aziz J.) June 14, 1966]

[K.L. — Civil Appeal No. 8 of 1966]

Landlord and Tenant — Claim for possession — Burden of proof that premises are controlled — Evidence Ordinance, 1950, s. 103 — Premises and furniture let at entire rent — Return of furniture — Apportionment of rent — Control of Rent Ordinance, 1956.

This was an appeal against the decision of the learned president of the sessions court dismissing the claim by the appellant for the possession of premises let to the respondent. The appellant was the owner of the premises and had let the premises to one Balakrishnan for $25 a month. Balakrishnan sublet the premises to the respondent by an agreement under which the respondent was to pay $55 which was stated to be the rental for the premises and furniture in it. Subsequently Balakrishnan assigned the subtenancy to the appellant, the original landlord. The respond nt tendered rent of $25 to the appellant but this was refused. The appellant thereupon brought an action to recover possession of the premises. The respondent did not deny the tenancy but alleged (a) that as Balakrishnan had recovered the furniture there should be an apportionment of the rent for premises and furniture and (b) that the premises were controlled premises within the meaning of the Control of Rent Ordinance, 1956. The learned president held that the onus of proof that the premises were not controlled premises was on the appellant and as he did not prove that the house was built after January 31, 1948 the claim for vacant possession must be dismissed. He also apportioned the rent for the premises and the furniture and held that the rent for the premises was $25. The appellant appealed.

Held: (1) as it was the respondent who asserted that the premises were controlled premises, the burden of proof was on him and not on the appellant;

(2) in this case the respondent had not brought evidence to show that the premises were controlled and therefore the president of the sessions court was wrong in dismissing the claim of the appellant for possession;

(3) since the premises and furniture were let at an entire rent no apportionment could be made for the rent of the premises when the furniture was returned or unused.

Case referred to:—

(1) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

CIVIL APPEAL.

S. Y. Chan for the appellant.

K. Raja Nayagam for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: The facts are fairly clear from the record. The plaintiff, who is the owner of a piece of land at 4½ milestone Kantin Road, Batu Village, Kuala Lumpur on which stood a temporary house, rented the premises unfurnished to one Balakrishnan some time in 1961 at $25 per month. In 1963 Balakrishnan sub-let the house to the defendant by a brief agreement wherein the defendant agreed to pay $55 per month "being the rental of premises used for the business purposes at the above address and the following furniture as per schedule". There were five items of furniture in the schedule and the agreement also stipulated that the defendant ageed to return the furniture whenever the owner demanded for his personal use without any dispute. At the end of 1963 Balakrishnan executed a written agreement under which in consideration of a payment of $1,000 he agreed to "quit and deliver vacant possession of the premises to the landlord". To my mind, having regard to the surrounding cricumstances this agreement was an assignment of sub-tenancy to the original landlord. After the execution of this agreement the defendant tendered rent at $25 per month from January to April 1964 which was refused. Since the rent was in arrears the plaintiff then issued a notice to the defendant terminating the tenancy. The defendant did not dispute the tenancy agreement under which the rent of the premises was $55 but he contended that since the furniture had been returned to Balakrishnan there should be an apportionment of rent for premises and furniture. His case was that the rent of the premises unfurnished should be $25 per month. He, further, contended that the notice was invalid as the premises were controlled premises within the meaning of the Control of Rent Ordinance, 1956.

The learned president in his grounds of judgment stated firstly that the onus of proving that the house was not controlled premises was on the plaintiff and since the plaintiff had not proved that the house was built after 31st January 1948 he dismissed the claim for vacant possession. As regards the claim for arrears of rent he found that the plaintiff had no claim on the furniture at all and consequently he could not claim any rent in respect of the same. He held, therefore, that rent payable was $25 per month and, therefore, gave judgment for arrears of rent based on that rate.

Against that judgment the plaintiff has now appealed, the main grounds of which were, firstly, that the learned president had erred in law in deciding that the burden of proof lay on the landlord to prove that the premises in question were outside the area of a local authority and, secondly, that the learned president erred in law in apportioning the rental for the premises and for the furniture when upon the true construction of the agreement no such apportionment was contemplated. As regards onus of proof it has been held in *Annamalai Chettiar*

v. *Yeoh Kee Tin* [1] per Buhagiar J. who delivered the judgment of the Court of Appeal as follows:—

"I do not think that this is so; there is nothing in that section affecting the general principles of evidence regarding the burden of proof as laid down particularly in section 103 of the Evidence Ordinance, 1950; under that section the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact is to lie on any particular person. In that case the tenant (appellant) alleged that the rent of $130 a month was in excess of the standard rent; the burden of proving such fact was, therefore, on him....."

In this case it was the assertion of the tenant (the defendant) that the premises were controlled premises as it is situated within the municipal area. The defendant has not adduced one scrap of evidence to show that was the case, apart from saying that the house was built before 1943. Indeed, the plaintiff has adduced evidence, although uncalled for at that stage of the proceedings, in the person of the municipal inspector to show where the house was and in his words, "that they were looking after that village because they do not have their own local council. It is not within the municipal area."

On the second point the respondent's tenancy stems from the tenancy agreement between him and Balakrishnan and the rent was stated as $55 per month with option to the landlord to take back the furniture. It is not clear what happened to the furniture but it would appear from the defendant's letter to Balakrishnan that the furniture was unusable and that it had been surrendered back to Balakrishnan. The agreement does not stipulate for apportionment of rent. Since the premises and the furniture were let at an entire rent no apportionment can be made for the rent of the premises when the furniture is returned or unused as the rent issues from the land alone.

Consequently the appeal of the appellant will be allowed and the order of the learned president set aside. There will be substituted a judgment for the appellant for arrears of rent totalling $785 as prayed, order for vacant possession of the said premises and double rent for the period from 1st August 1964 to the date of surrender of vacant possession and costs.

Appeal allowed.

Solicitors: *Heng, Chen & Co.; K. Raja Nayagam.*

LIM SENG CHOON & OTHERS v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Suleiman J.) June 15, 1966]
[Kota Bharu — Criminal Appeal No. 11 of 1966]

Gaming — Assisting in the carrying on a public lottery — Presumption — Offending exhibits — Collective possession of — Forfeiture of money found on accused — Common Gaming Houses Ordinance, 1953, ss. 4(1)(c), 11 and 16(2).

Criminal Law and Procedure — Charge — Joinder of — Omission of word "jointly" — Whether prejudicial.

This was an appeal against the conviction of the appellants on a charge under section 4(1)(c) of the Common Gaming Houses Ordinance. As a result of a raid the police found the appellants with a number of documents relating to a public lottery. It was argued on appeal that the charge was bad as the word "jointly" was not used in it, that there was no proof of individual possession of the exhibits and that the presumption in the Ordinance applied only where exhibits were found in the possession of an individual.

Held: (1) the omission of the word "jointly" did not in the circumstances of this case prejudice the appellants at the trial and the defect, if any, was curable under section 422 of the Criminal Procedure Code;

(2) there was ample evidence of collective possession of the exhibits in this case;

(3) the presumption in the Common Gaming Houses Ordinance was as applicable to a case of joint possession as it was in a case of individual possession.

Case referred to:—

(1) *Chan Pean Leong* v. *Public Prosecutor* [1956] M.L.J. 237.

CRIMINAL APPEAL.

C. O. Lim for the appellant.

Mohamed Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the respondent.

Wan Suleiman J.: This is an appeal against conviction brought by the eight appellants who had been charged in the sessions court, Kota Bharu with assisting in the carrying on of a public lottery of the variety commonly called the character lottery, an offence under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953.

Briefly the facts of the case are as follows:

At about 2.35 p.m. on 21st November 1965 a police party led by PW1 and PW2 raided a house, No. 156 Jalan Pasar Lama, Kota Bharu. In an upstairs room they found the eight appellants seated at three tables. Various documentary exhibits were found on these tables, as well as a plentiful supply of instruments for writing.

Expert evidence indicated that of the documents found, those with figures on them pertain to character lottery, and the presence of what he called the master schedule, exhibits 34 & 47 would tend to show that the appellants were promoters. Mr. C. O. Lim for appellants conceded that these documents were indeed what the expert witness said they were.

I need only deal with three of the grounds advanced by Mr. C. O. Lim on behalf of the appellants.

In the first of these Mr. Lim contended that the court below had erred in law and in fact in